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## TRANSMITTAL LETTER

## APPEAL BRIEF

Applicant : Vernon, et al.  
App. No : 10/699,485  
Filed : October 30, 2003  
For : MAGNETIC RAKE  
Examiner : Terrell Howard Matthews  
Art Unit : 3654

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I hereby certify that this correspondence and all marked attachments are being deposited with the United States Postal Service as first-class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on

June 26, 2006

(Date)

Nira Brand, Reg. No. 52,648

## Mail Stop Appeal Brief - Patents

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

Transmitted herewith for filing in the above-identified application are the following enclosures:

(X) Appeal Brief in 20 pages.

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The present application qualifies for Small Entity Status under 37 CFR 1.27.

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*Nira Brand*  
 Nira Brand, Reg. No. 52,648

# **ON APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES APPLICANT'S APPEAL BRIEF**

**Mail Stop Appeal Brief-Patents**

Commissioner for Patents  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

Sir:

In accordance with the Notice of Appeal filed on May 11, 2006, Applicant submits this Appeal Brief.

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### **I. REAL PARTY IN INTEREST**

Pursuant to 37 C.F.R. 41.37(C)(1), Applicant hereby notifies the Board of Patent Appeals and Interferences that Bradley G. Vernon, of 625 Funston St., San Luis Obispo, California 93401 and Patrick D. Arnold of 4915 Jespersen Rd., San Luis Obispo, California 93401, are the real parties of interest.

### **II. RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences.

### **III. STATUS OF CLAIMS**

Claims 4, 6-9, and 13-19, which include all of the presently pending claims in this application, have been finally rejected. All of these claims are being appealed.

### **IV. STATUS OF AMENDMENTS**

No amendment has been made to the application subsequent to the final rejection mailed on January 12, 2006.

### **V. SUMMARY OF CLAIMED SUBJECT MATTER**

This invention relates to tools used for clean-up at construction sites, playgrounds, and other locations, and, in particular, to a tool for collecting nails and other ferro-metallic items. Screws, nails, metal parts, and the like are often discarded on the ground throughout the day at worksites and can be very hazardous to people, vehicles, and machinery. These items, if not immediately picked up, may become buried in sand or gravel, hidden in weeds, or lodged in the ground, especially if the soil has become hardened and compacted, as after a rain.

Hand-held magnetic wands or other magnetic implements that can be waved or lightly dragged over the ground to attract ferro-metallic items off the surface cannot agitate the soil or other ground cover sufficiently to consistently unearth and collect the nails or other dangerous ferro-metallic items from the ground.

One solution to the problem has been to first mechanically agitate the ground with a conventional rake and then to follow up with a magnetic pick-up device, making the job a two-step process and requiring two different tools in order to do an effective job.

The invention solves this problem by providing a construction strength rake that includes a hollow, toothed rake body enclosing one or more magnets. As the rake is used at the jobsite or other area being cleaned, the rake teeth agitate the ground cover sufficiently to unearth, dislodge, and catch any discarded nails, screws, or other ferro-metallic items, while the one or more magnets enclosed in the rake body simultaneously attract the ferro-metallic debris to the rake body for collection and proper disposal.

Figures 1 and 2 below, reproduced from the Applicant's specification, illustrate one embodiment of the invention. Figure 1 provides a side cutaway view of the toothed rake body with the square magnet enclosed. Figure 2 shows a plan view of the rake body showing the profile and relative shape of the teeth.

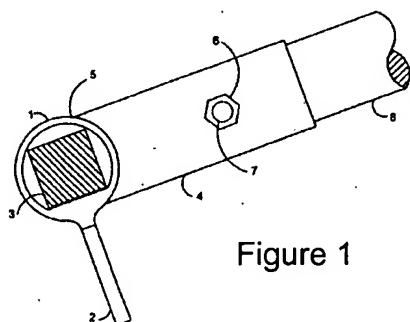


Figure 1

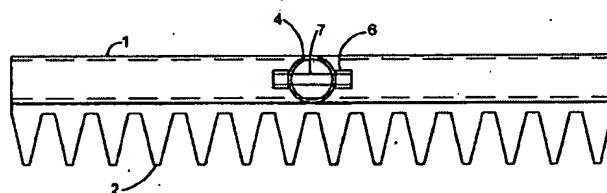


Figure 2

Vernon, et al.

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The Examiner has rejected Claims 4, 6-9, and 13-19 under 35 U.S.C. §103(a) as being unpatentable over Jameson (U.S. 5,395,148) in view of Lantz (U.S. 1,927,873). In particular, with respect to the various claims, the Examiner has asserted that it would

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have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Jameson to include various features taught by Lantz.

## **VII. ARGUMENT**

As background to the arguments, it will be useful to briefly review the definition of the term "rake" as it applies to a tool. As defined in *Merriam Webster's Collegiate® Dictionary, Tenth Edition Copyright © 1993 by Merriam-Webster, Incorporated*, a rake is "an implement equipped with projecting prongs to gather material (as leaves) for loosening or smooth the surface of the ground." As defined in *The Oxford Dictionary and Thesaurus, American Edition, Copyright © 1996 by Oxford University Press*, a rake is "an implement consisting of a pole with a crossbar toothed like a comb at the end, or with several tines held together by a crosspiece, for drawing together hay, etc., or smoothing loose soil or gravel." As exemplified by these references, virtually all definitions of the rake tool include the characteristic of having teeth, prongs, or tines to perform the function of the tool.

A copy of the covers, copyright pages, and relevant definition pages of these references is included in the Evidence Appendix of this paper.

The Examiner has rejected all of the pending claims based on a combination of the references of Jameson and Lantz. Applicant respectfully disagrees with this assertion, and submits that, according to MPEP §2413.01, "a proposed modification cannot render the prior art unsatisfactory for its intended purpose or change the principle of operation of a reference."

### **Jameson**

Figure 1 of Jameson is reproduced below. This preferred form of Jameson's device includes a handle and a cylindrical housing that encloses a plurality of magnets. Jameson describes the tool as a device for collecting metal particles from the floor, "such as the area around a metal turning lathe in a machine shop." (col. 2, lines 12-14)

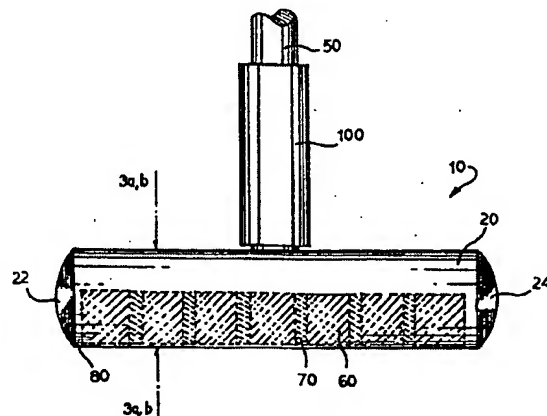
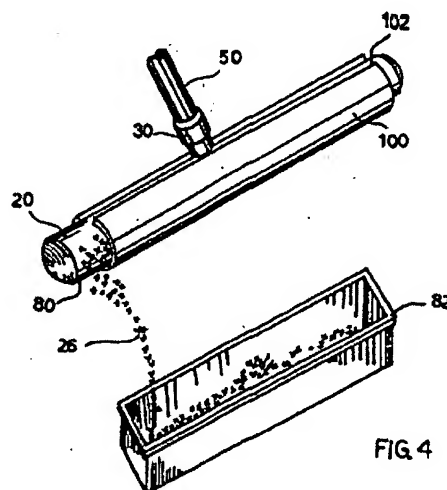


Figure 1  
Jameson et al.

It is relevant to note that Jameson describes the ferro-metallic material being collected as "particles." One can assume that the material may, therefore, at least in some instances, include particles that are much smaller than the size of a nail.

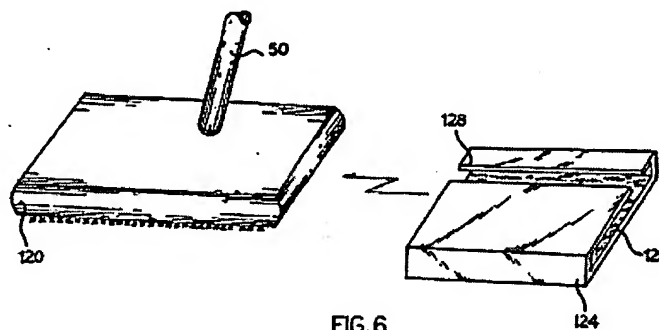
Furthermore, as exemplified in Figure 4, reproduced below, every embodiment of the device described by Jameson includes a cleaning cuff 100 that is configured to encircle and slide over the magnet housing of the device in order to push the ferro-metallic particles off the housing. This ability to slide a cuff over the housing to remove the metal particles is described as an "important function of the invention," (col. 3, line 18) and aspects of the invention that work in cooperation with the cuff, in particular, the flux free zone of the magnet housing, are described as "essential to efficient operation of the invention." (col. 3, lines 13-17).



Jameson, et al.

FIG. 4

To enable the functioning of Jameson's cleaning cuff, the body of the device must be suitably shaped to allow the cuff to slide smoothly over its surface. For example, the one alternative shaping of the housing and cuff taught by Jameson, in Figure 6 reproduced below, similarly allows for smooth sliding of the cuff over the housing. Throughout the disclosure, the benefits of the smooth, streamlined housing are repeatedly extolled.



Jameson, et al.

Thus, although Jameson calls his device a "rake," Jameson does not include the single most characteristic feature of any rake, namely a head with projecting teeth, otherwise known as tines or prongs. Nor does Jameson include any suggestion or motivation to add teeth (and especially the plow-shaped teeth of Lantz, as will be explained below) to its streamlined-housing-and-cuff arrangement for the collection of ferro-metallic particles.

Indeed, the addition of teeth would make the device *less* effective for the collection of metallic particles such as are found on the floor around a metal turning lathe in a machine shop, because the particles would frequently be small enough to slip through the teeth. The addition of teeth would also render the tool unsatisfactory for what Jameson asserts as "essential to efficient operation of the invention" (col. 3, lines 13-17), namely the provision of a streamlined housing over which a snugly shaped cuff may smoothly slide to push off the collected metallic particles. Furthermore, the teeth

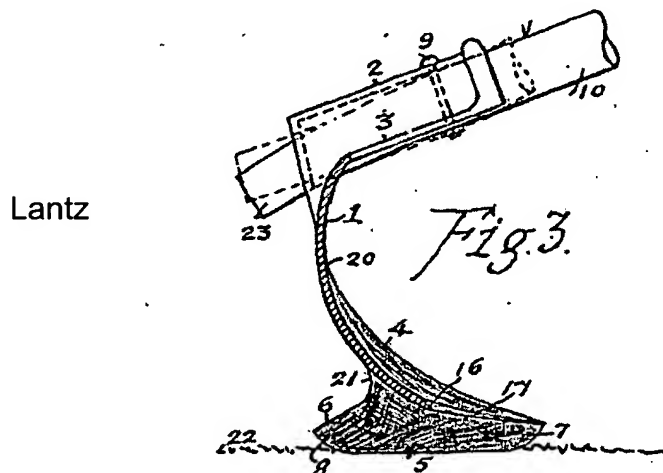
would effectively hold the magnet housing up off the surface of the floor, thereby causing the modified device to deviate from the inventor's stated purpose of maintaining direct contact with the surface to be swept.

For at least the above-enumerated reasons, the modification of Jameson's housing by adding teeth would thus render the device unsatisfactory for its intended purpose.

### Lantz

Furthermore, the rake body and rake "teeth" taught by Lantz are particularly unsuitable for a device designed to rake and magnetically collect screws, nails, and other ferro-metallic items, as will be shown below.

Lantz teaches a "nonleaf holding rake." Lantz states, at the beginning of the disclosure, "The purpose of my invention is to provide a rake to which leaves will not adhere." (Lines 4-6) Toward this end, Lantz provides a specially shaped rake body, depicted in side view in Figure 3, reproduced below. Applicant has annotated the Figure with shading to more clearly point out the rake body's distinctive profile.



As described in Lantz, "instead of having isolated teeth as is usual in conventional types of rakes, the front ribs 4 spaced apart lengthwise of the body in their spacing



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simulate ordinary rake teeth but they are formed as curved ribs integral with the body.” (Lines 43-48) Lantz goes on to describe, “Ribs or shoes 5 are formed on the underside of the body, transversely thereof,...as a continuation of ribs 4.” Thus, the rake includes pairs, each formed from a rib portion 4 and a plow-shaped shoe portion 5, which “simulate teeth” spaced at intervals across the length of the rake body.

Using Lantz’s specially shaped rake, “the leaves which are gathered in front of the rake roll upward without adhering to the body because the projecting ribs 4 prevent this, and the small leaves will not pass through beneath the body, but the grass can freely pass between the shoes 5 and beneath the edge 16” (lines 93-98).

The addition of Jameson’s magnets to the rake taught by Lantz would not in any way enhance the non-sticking operation of the rake with respect to leaves, and, indeed, if ferro-metallic materials were interspersed amongst the leaves being raked, might even impede the non-leaf holding function of the rake by catching some of the leaves in between the collected materials and the rake.

Lantz’s rake body, while unitary formed, is not hollow, nor is there any suggestion to include a hollow recess within the rake body to enclose magnets or for any other reason. Moreover, the addition of magnets would be counter-intuitive, because the function of magnets is to attract, while the stated purpose of Lantz is to ensure that leaves do *not* adhere to his rake.

### **Summary**

For the reasons given above, Applicant submits that the combination of Jameson and Lantz in order to establish obviousness of the current invention is improper. Combining the references would render each of the references unsatisfactory for its intended purpose and change the principle of its operation. Applicant, therefore, respectfully requests that the rejection of Claims 4, 6-9, and 13-19 be withdrawn.

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**With respect to the individual claims:**

**Claims 4, 6, and 7**

The Examiner states that Jameson discloses a "Magnetic Rake," but that Jameson does not disclose that the rake body is toothed. The Examiner further states that, "It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Jameson to include an aluminum toothed body as taught by Lantz so that the teeth could agitate and pull up particles from the ground."

Applicant respectfully disagrees and submits that, as stated above, the combination of Jameson and Lantz to establish obviousness of the current invention is improper. Combining Jameson and Lantz would defeat the purposes of each of the references, since the Jameson device would no longer be close to the ground to pick up shavings or streamlined enough to allow for use of a cleaning cuff, and the Lantz device would not easily release the articles being raked, which is its primary purpose. The Examiner has not shown that either reference suggests a combination with the other, and, in fact, the references teach against such a combination. The Applicant therefore respectfully traverses the Examiner's rejections of Claims 4, 6, and 7 and requests the allowance of same.

**Claims 8 and 9**

The Examiner asserts (a) that it would be obvious to a person of ordinary skill in the art to modify the handle of Jameson as described in Claim 8, and (b) that Jameson teaches the handle as claimed in Claim 9. The Examiner further asserts that, accordingly, the combination of Jameson and Lantz renders both Claim 8 and Claim 9 obvious. However, as described above, Applicant submits that, notwithstanding the description of the handle, the combination of Jameson and Lantz for purposes of establishing obviousness of the present invention is improper. The Applicant therefore respectfully traverses the Examiner's rejections of Claims 8 and 9 and requests the allowance of same.

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### **Claims 13-14 and 16-19**

The Examiner states that Jameson discloses a method of collecting ferro-magnetic materials from a surface area, but that Jameson does not disclose that the rake body is toothed. The Examiner further states that, "It would have been obvious to a person of ordinary skill in the art at the time of the invention to modify the apparatus of Jameson to include an aluminum toothed body as taught by Lantz so that the teeth could agitate and pull up particles from the ground."

Applicant respectfully disagrees and submits that, as stated above, the combination of Jameson and Lantz to establish obviousness of the current invention is improper. In combining the references, the Examiner is selecting features from the two references based on the teaching of the present application. Jameson does not teach agitating the surface of the floor from which he is removing particles. Lantz does not suggest having anything stick to his rake; in fact, his focus is just the opposite. Combining the references is, therefore, pure hindsight, and, as such, is improper motivation to combine. The Applicant therefore respectfully traverses the Examiner's rejections of Claims 13-14 and 16-19 and requests the allowance of same.

### **Claim 15**

The Examiner asserts that it would be obvious to a person of ordinary skill in the art to combine the devices of Jameson and Lantz and to invert the resulting rake body so that the teeth face away from the surface being raked. However, as described above, Applicant submits that, notwithstanding the position of the teeth with respect to the surface being raked, the combination of Jameson and Lantz for purposes of establishing obviousness of the present invention is improper. The Applicant therefore respectfully traverses the Examiner's rejections of Claim 8 and requests the allowance of same.

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### **CONCLUSION**

Because all of the Examiner's rejections are based on a combination of the Jameson reference and the Lantz reference, and because combination of the Jameson reference and the Lantz reference does not teach or suggest each and every element of the claims, the Applicants respectfully submit that the claims of this application are allowable and that the rejections should be overruled by the Board of Appeals.

Respectfully submitted,



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## **VIII. CLAIMS APPENDIX**

The following is a listing of the claims as pending:

### **Claims 1-3 (Canceled)**

4. A magnetic rake, comprising:  
one or more magnets;  
a hollow, unitarily formed, toothed rake body contain said magnets; and  
a handle attached to said rake body.

### **5. (Canceled)**

6. The magnetic rake of Claim 4, wherein said hollow, unitarily formed toothed rake body is formed of a non-magnetic alloy.

7. The magnetic rake of Claim 6, wherein said non-magnetic alloy is aluminum.

8. The magnetic rake of Claim 4, wherein said handle is detachably connected to said hollow, unitarily formed toothed rake body using a mechanical system.

9. The magnetic rake of Claim 4, wherein said handle is permanently attached to said hollow, unitarily formed toothed rake body.

### **Claims 10-12 (Withdrawn)**

13. A method of collecting ferro-magnetic items from a surface area, said method comprising the acts of:  
operating over said surface area a hollow, unitarily formed toothed rake body that contains at least one magnet inside; and  
allowing ferro-magnetic items from said surface area to collect on said rake body.

14. The method of Claim 13, wherein operating said hollow, unitarily formed toothed rake body comprises agitating said surface area with said teeth to loosen said ferro-magnetic items.

15. The method of Claim 13, wherein operating said hollow, unitarily formed toothed rake body comprises inverting said rake body such that a toothed portion of said hollow, unitarily formed toothed rake body faces away from said surface area.

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16. A system for collecting ferro-metallic items from an area, said system comprising:

means for agitating a ground surface of said area; and  
means, enclosed within said means for agitating, for attracting ferro-metallic items to said means for agitating using magnetic force.

17. The system of Claim 16, wherein said agitating means comprise hollow, unitarily formed toothed rake body with triangular teeth.

18. The system of Claim 16, wherein said agitating means comprise a hollow, unitarily formed toothed rake body with non-triangular teeth.

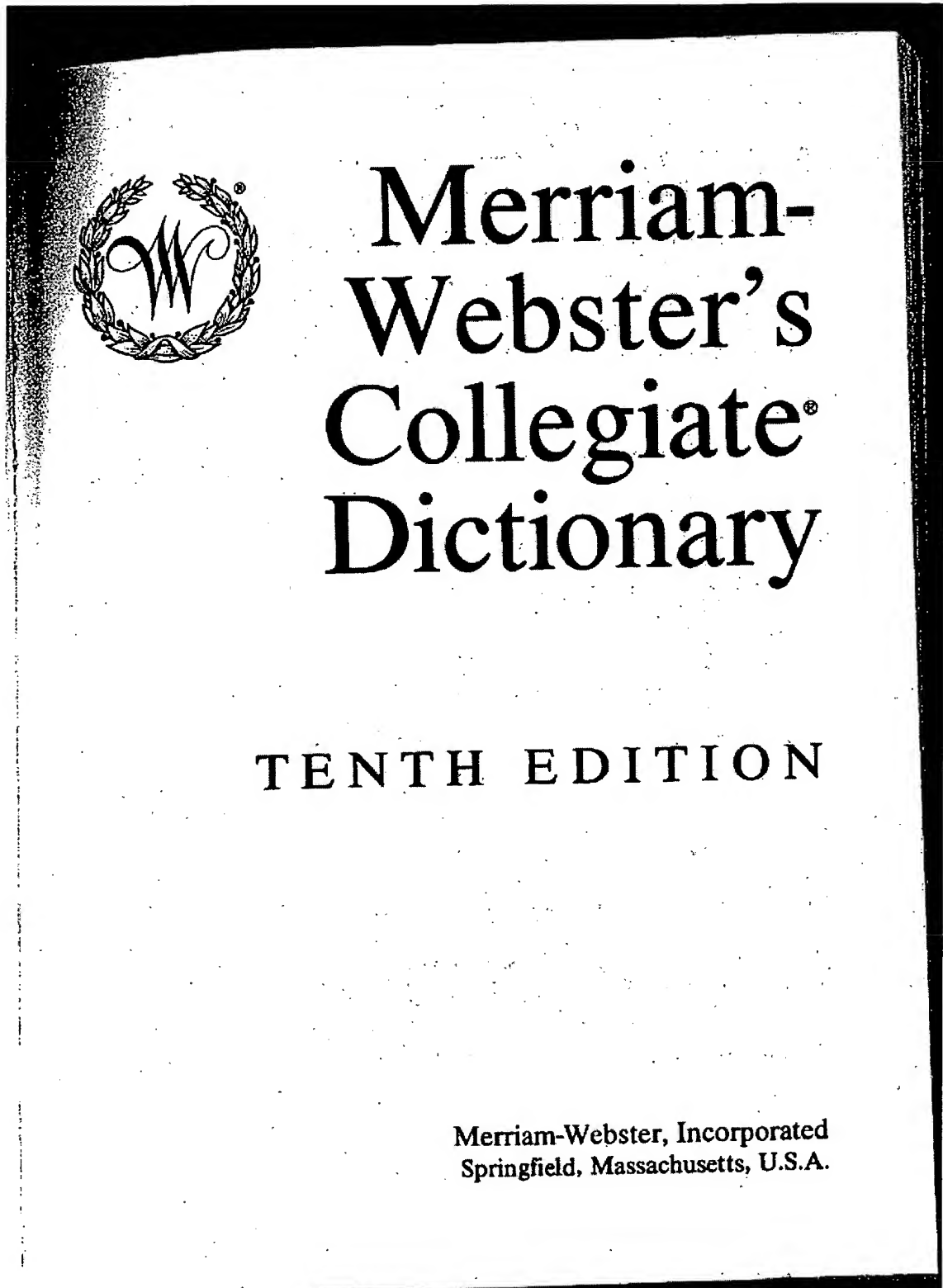
19. The system of Claim 16, wherein said attracting means comprise magnets housed inside a hollow, unitarily formed toothed rake body.

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## IX. EVIDENCE APPENDIX



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# **The Oxford Dictionary and Thesaurus**

*American Edition*

New York Oxford

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# raise/rally

rain usually falls. 2 (of cloud, wind, etc.) laden with or bringing rain. o rainy day a time of special need in the future. o rainily adv. raininess n. [OE *rainig* (as *RAIN*)]  
 ■ 1 see WET adj. 2.  
**raise** /rayz/ v. & n. ● v. 1. put or take into a higher position. 2 (often foll. by up) cause to rise or stand up or be vertical; set upright. 3 increase the amount or value or strength of (raised their prices). 4 (often foll. by up) construct or build up. 5 levy or collect or bring together (raise money; raise an army). 6 cause to be heard or considered (raise a shout; raise an objection). 7 set going or bring into being; arouse (raise a protest; raise hopes). 8 bring up; educate. 9 breed or grow (raise one's own vegetables). 10 promote to a higher rank. 11 (foll. by to) Math. multiply a quantity to a specified power. 12 cause (bread) to rise with yeast. 13 Cards a bet more than (another player). b increase (a stake). c Bridge make a bid contracting for more tricks in the same suit as (one's partner); increase (a bid) in this way. 14 abandon or force an enemy to abandon (a siege or blockade). 15 remove (a barrier or embargo). 16 cause (a ghost, etc.) to appear (opp. LAY' 6b). 17 colloq. find (a person, etc., wanted). 18 establish contact with (a person, etc.) by radio or telephone. 19 (usu. as raised adj.) Brit. cause (pasture, etc.) to stand without support (a raised pie). 20 Naut. come in sight of (land, a ship, etc.). 21 make a nap on (cloth). 22 extract from the earth. ● n. 1 Cards an increase in a stake or bid (cf. sense 13 of v.). 2 an increase in salary. o raise Cain see CAIN. raised beach Geol. a beach lying above water level owing to changes since its formation. raise the devil colloq. make a disturbance. raise a dust Brit. 1 cause turmoil. 2 obscure the truth. raise one's eyebrows see EYEBROW. raise one's eyes see EYE. raise from the dead restore to life. raise one's glass to drink the health or good fortune of. raise one's hand to make as if to strike (a person). raise one's hat (often foll. by to) remove it momentarily as a gesture of courtesy or respect. raise hell colloq. make a disturbance. raise a laugh esp. Brit. cause others to laugh. raise a person's spirits give him or her new courage or cheerfulness. raise one's voice speak, esp. louder and in anger. raise the wind Brit. procure money for a purpose. o raisable adj. [ME f. ON *reisa*, rel. to REAR?]  
 ● v. 1 lift (up), elevate, upraise, take up; hoist, pull up, haul up. 2 increase, advance, put up, run up, colloq. jack (up). 4 erect, put up, construct, build, put together, assemble, frame, run up, produce, create. 5 assemble, gather, bring or gather together, muster, amass, mobilize, round up, rally, collect, convene, recruit, put together, colloq. pull together; levy. 6 introduce, broach, bring up, bring or put forward, present, suggest, mention, moot, set forth; utter, express, let out. 7 occasion, put or set in motion, institute, prompt, initiate, engender, stir up, instigate, inspire, give rise to, bring about, arouse, originate; rouse, buoy, lift, uplift, cheer, invigorate, stimulate, animate, vivify, colloq. boost; foster, nurture, heighten, quicken, encourage, develop. 8 bring up, nurture, rear; parent; see also EDUCATE 1. 2. 9 farm, grow, cultivate, plant, nurture, harvest, propagate; breed. 10 see PROMOTE 1. 15 remove, lift, abandon, discontinue. (bring to an) end, terminate. ● n. 2 see INCREASE n. 3. o raise from the dead revive, resurrect, resuscitate; reanimate, recall. raise one's glass to see TOAST v. 4. raise hell make a disturbance, raise Cain, Brit. raise a dust, colloq. raise the devil; see also STORM v. 1.  
**raisin** /rayzn/ n. a partially dried grape. o raisiny adj. [ME f. OF ult. f. L *racemus* grape bunch]  
**raison d'être** /rayzn d'tr/ n. (pl. *raisons d'être* pronounced same) a purpose or reason that accounts for or justifies or originally caused a thing's existence. [F. = reason for being]  
 ● purpose, reason, function, role.  
**rai** /ra:/ n. (prec. by the) hind. British sovereignty in India. [Hindi *rāj* reign]  
**raja** /raja/ n. (also *rajah*) Aus. 1 an Indian king or prince. 2 a petty dignitary or noble in India. 3 a Malay or Javanese chief. o rajaship n. [Hindi *rājā* f. Skr. *rājan* king]

**Rajput** /rajpoot/ n. (also *Rajpoot*) a member of a Hindu soldier caste claiming Kshatriya descent. [Hindi *rājput* f. Skr. *rājan* king + *put* son]  
**rake** /rayk/ n. & v. ● n. 1 a an implement consisting of a pole with a crossbar toothed like a comb at the end, or with several tines held together by a crosspiece, for drawing together hay, etc., or smoothing loose soil or gravel. b a wheeled implement for the same purpose. 2 a similar implement used for other purposes, e.g., by a croquet player drawing in money at a gaming table. ● v. 1 v. (usu. foll. by out, together, up, etc.) collect or gather or remove with or as with a rake. 2 tr. make tidy or smooth with a rake (raked it level). 3 intr. use a rake. 4 tr. & intr. search with or as with a rake; search thoroughly; ransack. 5 tr. a direct gunfire along (a line) from end to end: b sweep with the eyes. c (of a window, etc.) have a commanding view of. 6 tr. scratch or scrape. o rake in colloq. amass (profits, etc.). rake it in colloq. make much money. rake-off colloq. a commission or share, esp. in a disreputable deal. rake up (or over) revive the memory of (past quarrels, grievances, etc.). o raker n. [OE *racu*, *racu* f. Gmc. partly f. ON *raka* scrape, [rake]  
 ● v. 1 (rake together) gather, collect, draw or drag together; (rake out) sift (out), remove, take out, clear (out), clean; (rake up) scrape up, pick up, dig up, dredge up, find, unearth. 2 see SMOOTH v. 1. 4 (rake through) search, probe, ransack, scour, comb, rummage through, pick through or over, go through, rifle (through). 6 scrape, scratch, grate, graze, rasp. o rake in amass, collect, gather (up or in), pull in, accumulate. rake it in coin money, make money (hand over fist), become wealthy. rake-off commission, share, colloq. cut, kickback, sl. piece. rake up revive, resuscitate, resurrect, raise, bring up, recall, go over; dredge up, unearth, dig up.  
**rake** /rayk/ n. a dissolute man of fashion. o rake's progress esp. Brit. a progressive deterioration, esp. through self-indulgence (the title of a series of engravings by Hughan 1735). [short for archaic *rakehell* in the same sense]  
 ● debauchee, voluptuary, rascal, libertine, profligate, prodigal, lothario, womanizer, lecher, playboy, ladies' man, lady-killer, Don Juan, Casanova, d. wolf; young blood, fop, man about town; see also DANDY n.  
**rake** /rayk/ v. & n. ● n. 1 tr. & intr. set or be set at a sloping angle. 2 intr. a (of a mast or funnel) incline from the perpendicular toward the stern. b (of a ship or its bow or stern) project at the upper part of the bow or stern beyond the keel. ● n. 1 a raking position or build. 2 the amount by which a thing rakes. 3 the slope of the stage or the auditorium in a theater. 4 the slope of a seat back, etc. 5 the angle of the edge or face of a cutting tool. [17th c.: prob. rel. to G *ragen* project, of unkn. orig.]  
**raki** /raikee, rakee, rākee, -ko/ n. (pl. *rakis*) any of various liquors made in E. Europe and the Middle East. [Turk. *raqi*]  
**rakish** /raykish/ adj. of or like a rake (see RAKE?); dashing, jaunty. o rakishly adv. rakishness n.  
 ● dashing, jaunty, dapper, spruce, debonair, raffish, smart, flashy, chic, fashionable, elegant, dandyish, foppish, colloq. sharp.  
**rakish** /raykish/ adj. (of a ship) smart and fast looking, seemingly built for speed and therefore open to suspicion of piracy. [RAKE?, assoc. with RAKE?]  
**raku** /raaku/ n. a kind of Japanese earthenware, usu. lead-glazed, [Jap., lit. enjoyment]  
**rattle** /raatl/ n. an abnormal rattling sound heard in the auscultation of urthealthy lungs. [F. f. *râler* to rattle]  
**rall** /ral/ adv. & adj. & n. = RALLANTANDO. [abbr.]  
**rallentando** /ralantando, ralantando/ adv., adj., & n. Mus. ● adv. & adj. with a gradual decrease of speed. ● n. (pl. -os or rallentandi /-dee/) a passage to be performed in this way. [It.]  
**ralline** /ralin, -in/ adj. of the bird-family Rallidae (see RAL?). [mod.L. *rallus* RAL?]  
**rally** /ralle/ v. & n. ● v. (-les, -led) 1 tr. & intr. (often foll. by round, behind, to) bring or come together as support or

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## **X. RELATED PROCEEDINGS APPENDIX**

No related proceedings.

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